

DRAFT

ITEM #2

P.C. MEETING: 01/09/03

PUBLIC HEARING

(CONTINUED FROM 11/21/02)

COMMUNITY: Bear Valley/S-3

APPLICANT: A.J. Acosta

FILE/INDEX: CUP/M366-9N/APN: 0313-343-04

PROPOSAL: Appeal of a staff action to Deny a request to extend the approval period three years for a Conditional Use Permit to establish two 12,000 sq. ft. buildings for heavy equipment repair, storage and offices; a lumber/firewood/general contractors storage yard with associated wood/green material processing including sawing and chipping on 5.5 acres.

LOCATION: North Shore Drive (Hwy 38) and Eagle Mountain Drive SE Corner.

REP(S): Kenneth Calejari, Applicant's Attorney

STAFF: J. Patrick McGuckian

Mr. Pat McGuckian, Planner, discussed the continuance of the subject item at the Planning Commission Hearing of November 21, 2002. Mr. McGuckian informed the Commission of the pending court action by the applicant, adding that that court action was continued. He told the Commission that staff was informed that the applicant filed a grading plan and an erosion control plan on January 8, 2003.

Commissioner Dowling asked if the applicant had applied for the Special Use Permit (SUP). Mr. McGuckian stated that the applicant's attorney said they would be submitting the SUP today, pending the resolution of this meeting.

A question was raised by Commissioner Laning regarding the water issue. Mr. McGuckian discussed the pending court case continuance in relation to the water issue.

Mr. Rex Hinesley, Chief Deputy County Counsel, informed the Commission that at the previous meeting on November 21, 2002, the Commission closed the public hearing; therefore, they should reopen the public hearing.

Commissioner Dowling motioned to reopen public comment. Commissioner Kwappenberg seconded the motion.

PUBLIC TESTIMONY

The following people testified on the proposal:

- Kenneth Calejari, Applicant's Attorney
- Dana Van Leuven, Big Bear City Fire Chief
- Rodney W. Watkins, Big Bear City Community Services District

DRAFT

ITEM #2

P.C. MEETING: 01/09/03

- Joe Powers, Concerned Citizen
- Rod Watkins, CSD General Manager
- Georgette Jankowski, Concerned Citizen (Did not speak)
- Jeff Wright, Concerned Citizen (Did not speak, submitted slip after the close of public comment)

Mr. Kenneth Calegari, Applicant's Attorney, discussed the water connection issue and the Writ of Mandate hearing that was held on November 14, 2002.

Mr. Calegari discussed the easement issues in relation to obtaining a joint access with the property owner, and financing issues. He requested Mr. Acosta be granted a one-year extension instead of the three-year extension.

Mr. Dana Van Leuven, Big Bear City Fire Chief, stated that the Big Bear City Fire Department was concerned with Mr. Acosta's lack of compliance with the fire codes that are adopted by the Big Bear City Community Services and the County of San Bernardino. He stated that they would like to see the material on the site removed. He reiterated the Fire Districts concerns if the CUP extension was granted, would Mr. Acosta complete the project.

Commissioner Kwappenberg questioned when Mr. Acosta was asked to install the water on site and the necessary fire prevention materials. Mr. Van Leuven stated that Mr. Acosta was asked when he first occupied the property.

Mr. Rod Watkins, General Manager for the Big Bear City Community Services District, discussed the water issue, adding the site has water rights, but there is no system developed on the property. He added that Mr. Acosta is still operating his business and brings in material on almost a daily basis. He stated the CSD has concerns about getting a handle on these issues.

A question was raised by Commissioner Dowling regarding relinquishing the water rights. Mr. Watkins stated that he has been the General Manager for four years, and did not remember any exceptions to relinquishing the water rights. He further added that in the cases of commercial or large scale residential development, they require the water rights to be relinquished.

Mr. Joe Powers described the history of Mr. Acosta's project. He stated concerns with the Conditional Use Permit effective date of approval, October 17, 1991, and the expiration date of October 17, 2002, and with the lack of compliance on the conditions. He had obtained 50 signatures from residents dated August 23, 1997, who were against Mr. Acosta's project. He discussed Hwy 38 and traffic issues.

Ms. Georgette Jankowski was not in the audience and did not speak. Chairman Laning read her comments on the speaker form, which stated she was in favor of the denial and in opposition of approval of the project.

DRAFT

ITEM #2

P.C. MEETING: 01/09/03

Mr. Pat McGuckian commented that the applicant has been in deficit for three years, has failed to file a Mitigation Monitoring Reporting Program (MMRP) to go over the conditions. He listed the conditions that were not in compliance. He added that in the past 3 1/2 years, the applicant has made minimal progress; and, therefore, staff would still recommend denial of the extension request.

Commissioner Kwappenberg questioned how many conditions had been met from the 1999 Conditions of Approval. Mr. McGuckian replied less than 10% of the conditions had been completed. He stated the conditions that have been met were in relation to the grinding and the placement of the piles.

Chairman Laning questioned Mr. McGuckian about similar facilities on the mountain.

Commissioner Kwappenberg discussed relocation of the facility with Mr. McGuckian.

There followed a discussion between Chairman Laning and Mr. McGuckian regarding the procedures for upholding the denial, and the material on the site. Mr. McGuckian stated that if the Commission upheld the denial of the extension, then the applicant would have ten days to appeal it to the Board of Supervisors. If the action stood, then they would commence enforcement action to remove the materials on site, as stipulated in the Conditions of Approval.

Mr. Calegari commented that Mr. Acosta's site is currently in compliance with the Conditional Use Permit with the exception of the fire hydrants. He discussed the water issues, fire hydrants on property, legal issues regarding Big Bear Community Services District, green waste facility in relation to Mr. Acosta's operation, relocation efforts of Mr. Acosta, CUP extension and the grinding operations, financing issues, and delays in notification of approval of the CUP to Mr. Acosta.

Commissioner Laning asked Mr. Calegari if Mr. Acosta has been accepting material. Mr. Calegari responded not to his knowledge. He discussed the fact that Mr. Acosta is permitted to accept green material.

Mr. Matthew Marnell, Deputy County Counsel assigned to Code Enforcement, discussed the procedural aspects of the denial of the extension. He stated County Counsel currently has a court action pending with part of the lawsuit being a revocation of the Conditional Use Permit.

There being no one else in the audience to speak on this item, Chairman Laning closed the public testimony.

DISCUSSION:

Commissioner Kwappenberg moved that the Planning Commission Deny the Appeal and Uphold staff's determination to Deny the Extension of Time for the subject Conditional Use Permit.

DRAFT

ITEM #2

P.C. MEETING: 01/09/03

Commissioner Dowling seconded the motion.

Mr. Rex Hinesley, Chief Deputy County Counsel, suggested consideration as one of the findings in addition to the ones set forth in the staff report, to state that the applicant has failed to comply within a reasonable time with the terms and conditions of the approved CUP, including, but not limited to, those concerning fire protection, access, and implementation of mitigation measures. In addition, the applicant has continued his existing operations in violation of the performance criteria established by the CUP for such existing land uses.

Commissioner Kwappenberg amended her previous motion to include the additional finding stated by Mr. Hinesley. Commissioner Dowling seconded the amended motion.

COMMISSION ACTION

DENY the appeal and UPHOLD staff's determination to DENY the Extension of Time for the subject Conditional Use Permit, with the additional finding to read, *the applicant has failed to comply within a reasonable time with the terms and conditions of the approved CUP, including, but not limited to, those concerning fire protection, access, and implementation of mitigation measures. In addition, the applicant has continued his existing operations in violation of the performance criteria established by the CUP for such existing land uses.*

MOTION: KWAPPENBERG SECOND: DOWLING

AYES: Dowling, Kwappenberg, Laning

NOES: None

ABSENT: Brown

ABSTAIN: None